2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 3A

Title 11 (Chapters 27 to 71)

(As Revised 2019)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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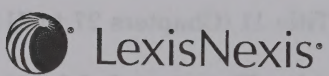

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

There are no new sections added in this supplement.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME THREE A

TITLE 11.

CIVIL PRACTICE AND PROCEDURE

Chapter 61.	Exercise of First Amendment Rights	11-61-1
Chapter 71.	Mississippi Back-To-Business Liability Assurance and Health Care Emergency Response Liability Protection Act	11-71-1

CHAPTER 27.

EMINENT DOMAIN

IN GENERAL

§ 11-27-15. Dismissal; grounds; appeal.

JUDICIAL DECISIONS

2. Appeals.

In a "Quick Take" eminent domain case, the property owners never filed a motion to dismiss pursuant to this section and therefore, that section was inapplicable and provided no guidance to the question of subject matter jurisdiction on appeal. Johnson v. Adams Cty., — So. 3d —, 2021 Miss. App. LEXIS 271 (Miss. Ct. App. June 22, 2021).

CHAPTER 37.

REPLEVIN

§ 11-37-101. How replevin commenced; immediate seizure of property sought.

JUDICIAL DECISIONS

1. In general.

Return of purported property owner's property was ordered because the trial court found that the testimony of the owner and the owner's friend that the owner stored the property in the trailer of the owner's former paramour and that the paramour was to return the property to the owner was more credible than the paramour's claim that the owner had given the paramour the items as gifts. At no point did the paramour raise an objec-

tion to a corrected list of the items on the basis that the list failed to include specific values for each item. Massey v. Neely, 309 So. 3d 138, 2021 Miss. App. LEXIS 25 (Miss. Ct. App. 2021).

CHAPTER 41.

MANDAMUS; PROHIBITION

§ 11-41-1. In what cases a remedy and how obtained.

JUDICIAL DECISIONS

1. In general.

Chancery court's order transferring petition for writ of mandamus showed that the only directive to the circuit court was to address the mandamus petition, in which the citizen requested that the sheriff be compelled to execute process on defendants in the citizen's public records action already pending in the chancery court; the circuit court had jurisdiction as to this issue pursuant to state law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

Circuit court abused its discretion in dismissing the citizen's mandamus petition and failing to compel the sheriff to execute process on public officials named as defendants in the citizen's public records action; the citizen had standing to seek mandamus and had a right to relief as he properly sought service of process, the sheriff was required by law to execute process, and the citizen had no other adequate remedy at law. Pryer v. Gates, 312 So. 3d 741, 2021 Miss. App. LEXIS 108 (Miss. Ct. App. 2021).

CHAPTER 46.

IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

§ 11-46-1. Definitions.

JUDICIAL DECISIONS

9. Miscellaneous.

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense because he waived the defense; the firefighter never raised a qualified immunity affirmative defense until he sought summary judgment on that basis fourteen months after he filed his answer, he actively participated in the litigation process, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, — So. 3d —, 2021 Miss. App. LEXIS 81 (Miss. Ct. App. Feb. 22, 2021).

§ 11-46-3. Declaration of legislative intent.

JUDICIAL DECISIONS

4. Illustrative cases.

Trial court did not err in ruling that a decision by plaintiff's coaches to let plaintiff run a high school cross-county race

after being stung by a wasp was protected by discretionary function immunity under the Mississippi Tort Claims Act, where the coaches provided care plaintiff following the sting that was at no fault of their own, and, after checking on plaintiff several times, he indicated that he desired to run in the race. Strickland v. Rankin Cty. Sch. Dist., — So. 3d —, 2021 Miss. App. LEXIS 245 (Miss. Ct. App. June 8, 2021).

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install a lift station. Williams v. City of Batesville, 313 So. 3d 479, 2021 Miss. LEXIS 69 (Miss. 2021).

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions.

JUDICIAL DECISIONS

3. Course and scope of employment.

District court properly dismissed the state employees' First Amendment retaliation claim under § 1983 and wrongful discharge claim under the Mississippi Tort Claims Act (MTCA) against defendants, state agency and former and current state officials, because sovereign immunity barred the employees' claims against the agency and the officials in their official capacities, and former official could not be held personally liable under MTCA for acts and omissions occurring within course and scope of his duties Corn v. Miss. Dep't of Pub. Safety, 954 F.3d 268, 2020 U.S. App. LEXIS 9456 (5th Cir. Miss.), cert. denied, — U.S. —, 141 S. Ct. 672, 208 L. Ed. 2d 277, 2020 U.S. LEXIS 5306 (U.S. 2020).

8. Immunity.

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install a lift station. Williams v. City of Batesville, 313 So. 3d 479, 2021 Miss. LEXIS 69 (Miss. 2021).

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.

JUDICIAL DECISIONS

3. Course and scope of duties.

District court properly dismissed the state employees' First Amendment retaliation claim under § 1983 and wrongful discharge claim under the Mississippi Tort Claims Act (MTCA) against defendants, state agency and former and current state officials, because sovereign immunity barred the employees' claims against the agency and the officials in their official capacities, and former official could not be held personally liable under MTCA for acts and omissions occurring within course and scope of his duties Corn

v. Miss. Dep't of Pub. Safety, 954 F.3d 268, 2020 U.S. App. LEXIS 9456 (5th Cir. Miss.), cert. denied, — U.S. —, 141 S. Ct. 672, 208 L. Ed. 2d 277, 2020 U.S. LEXIS 5306 (U.S. 2020).

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

1. In general.

Children of decedent failed to raise any genuine issue of material fact that a police officer turning on his blue lights and making a U-turn in order to stop a vehicle proceeding in a reckless and dangerous manner, less than 30 seconds before the speeding vehicle crashed, constituted reckless disregard for public safety. Smith v. City of Southaven, Miss., 308 So. 3d 456, 2020 Miss. App. LEXIS 662 (Miss. Ct. App. 2020).

6. Discretionary functions.

Because zoning enforcement is discretionary, the Bolivar County Board of Supervisors was immune from suit brought under the Mississippi Torts Claims Act. Short v. Bolivar Cty. Bd. of Supervisors, 303 So. 3d 87, 2020 Miss. App. LEXIS 470 (Miss. Ct. App. 2020).

Dismissal of homeowners' complaint against a county based on discretionary function immunity, when homeowners alleged that their homes were damaged by flooding after a heavy rain due to the county failing to properly maintain a creek, was inappropriate because the county's failure to properly maintain the creek's drainage path after it had undertaken that responsibility involved an element of choice or judgment so that the county was obligated to use due care to make certain that the creek was properly maintained. Moses v. Rankin Cty., 285 So. 3d 620, 2019 Miss. LEXIS 415 (Miss. 2019).

8. Police or fire protection.

Trial judge did not err in finding that a county was immune from liability because substantial evidence supported the judge's finding that an automobile accident victim failed to prove that a deputy sheriff acted in reckless disregard of the safety and well-being of others. The judge reasonably found that the deputy activated the lights and siren on the deputy's patrol car, accelerated to a high speed, and successfully passed slow-moving vehicles en route to a medical emergency when another motorist negligently drove into the deputy's car. McKay v. Choctaw Cty., 312 So. 3d 404, 2021 Miss. App. LEXIS 76 (Miss. Ct. App. 2021).

9. Immunity.

Automobile accident victim's claims in a negligence action against a county were barred by the weather exception when the victim sustained injuries as the victim drove a vehicle across a washout on a county road because county was immune for any breach of a duty to warn of the washout as the accident was caused solely by the effect on the use of streets and highways of a significant rain event that occurred. 2021 Miss. App. LEXIS 71.

In a case in which a minor foster child alleged that his foster parent sexually abused him, the circuit court did not err in denying the motion for summary judgment of the Mississippi Department of Human Services (DHS) because the DHS did not meet its burden of production or persuasion under the summary judgment rule as the Mississippi Tort Claims Act immunity was an affirmative defense, and there was no evidence in the record that the DHS followed its policies and regulations regarding the DHS's care and treatment of the minor child during placement or after the abuse allegations were reported and investigated. Miss. Dep't of Human Servs. v. D.C., 289 So. 3d 712, 2019 Miss. LEXIS 286 (Miss. 2019).

10. Waiver of immunity.

Circuit court properly awarded damages to a pedestrian in her personal injury

action against a city because, inter alia, the city waived its affirmative defense of immunity by waiting 17 years after filing its answer to the pedestrian's complaint, the photographic evidence showed that the uncovered water-meter opening in the sidewalk over which the pedestrian fell had grass approximately one foot tall growing out of it, she made several emergency room visits with complaints of neck and arm pain, one of her treating physicians stated that her MRI results were consistent with her medical complaints, and the circuit court considered the pedestrian's numerous other health ailments. City of Jackson v. Hilton, — So. 3d —, 2021 Miss. App. LEXIS 283 (Miss. Ct. App. June 29, 2021).

Circuit court abused its discretion by implicitly allowing a volunteer firefighter to amend his answer when it granted his motion for summary judgment based upon a qualified immunity defense because he waived the defense; the firefighter never raised a qualified immunity affirmative defense until he sought summary judgment on that basis fourteen months after he filed his answer, he actively participated in the litigation process, and no extreme and unusual circumstances warranted his delay. Cook v. Taylor, — So. 3d —, 2021 Miss. App. LEXIS 81 (Miss. Ct. App. Feb. 22, 2021).

11. Illustrative cases.

Because a property owner could be able to prove a set of facts under the Mississippi Tort Claims Act for actions by a city that were not exempt from immunity, the circuit court erred by dismissing the owner's claims of basic negligence; a genuine issue remained as to whether the city exercised ordinary care in exploring every feasible alternative it could before spending the money necessary to install a lift station. Williams v. City of Batesville, 313 So. 3d 479, 2021 Miss. LEXIS 69 (Miss. 2021).

In a case in which plaintiff sued defendant city for injuries he allegedly sustained after his arrest, the Supreme Court concluded that no substantial and credible evidence supported a finding of reckless disregard within the meaning of the Mississippi Tort Claims Act (MTCA). Therefore, the city was not liable for plaintiff's claim under Miss. Code Ann. § 11-46-9(1)(c) of the MTCA. City of Vicksburg v. Williams, 294 So. 3d 599, 2020 Miss. LEXIS 89 (Miss. 2020).

Trial court erred by dismissing the pedestrian's negligence action against the county because her allegations were sufficient to avoid the immunity afforded by the dangerous condition exception, as she alleged that she tripped because her foot got caught on the sidewalk that was protruding several inches above the other section of the sidewalk, and that the sidewalk had been in a state of disrepair for several years. Long v. Jones County, 301 So. 3d 62, 2020 Miss. App. LEXIS 421 (Miss. Ct. App. 2020).

In a plurality opinion, the Supreme Court concluded the trial court did not err in finding that plaintiff failed to establish a prima facie case of negligence on the part of defendant county's employees. The only evidence of any type of negligence was plaintiff's running into the rear end of a garbage truck in blinding fog. Robinson v. Holmes Cty., 284 So. 3d 730, 2019 Miss. LEXIS 348 (Miss. 2019).

§ 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind.

JUDICIAL DECISIONS

4. Applicability.

In a case in which a guardian filed suit on behalf of a minor against governmental defendants, the guardian's failure to comply with the Mississippi Tort Claims Act's notice requirements warranted dismissal of claims not subject to dismissal on statute of limitations grounds. B.G. v. Banks, 301 So. 3d 55, 2020 Miss. App. LEXIS 400 (Miss. Ct. App. 2020).

Because plaintiff failed to comply with the Mississippi Tort Claims Act's statutory notice requirements by serving either a city's mayor or the city clerk, the circuit court properly dismissed her action against the city. Dobbs v. City of Columbus, 285 So. 3d 1219, 2019 Miss. App. LEXIS 596 (Miss. Ct. App. 2019).

There was nothing in the record to indicate that a city ever communicated about the substance of plaintiff's claims with plaintiff. Accordingly, the record did not support plaintiff's contention that the city waived the pre-suit notice requirement set forth in Miss. Code Ann. § 11-46-11. Dobbs v. City of Columbus, 285 So. 3d 1219, 2019 Miss. App. LEXIS 596 (Miss. Ct. App. 2019).

8. Written notice.

In a case in which a pro se plaintiff appealed the circuit court's dismissal of her complaint, she had failed to comply with the notice requirement of Miss. Code Ann. § 11-46-11(2), and she was held to the same rules of procedure as a represented party. Butler v. Jim Ray & E. Webster High Sch., 302 So. 3d 670, 2020 Miss. App. LEXIS 453 (Miss. Ct. App. 2020).

11. Discovery rule.

Trial court erred by granting the hospital's motion to dismiss the patient's medical malpractice claim under the one-year statute of limitations in this statute because the patient's injury was the misdiagnosis of her condition as multiple sclerosis; and the letter the patient received from the hospital in November 2016 was insufficient to put her on notice of that injury or the act or omission that caused it as the letter did not say that the hospital fired her doctor for misdiagnosing or mistreating patients, the letter was generic and sent to all of the doctor's patients, not to the patient individually, and the letter included no specifics about any misdiagnosis or treatment of the patient personally. Green v. Singing River Health Sys., 294 So. 3d 646, 2020 Miss. App. LEXIS 29 (Miss. Ct. App.), cert. denied, — So. 3d —, 2020 Miss. LEXIS 110 (Miss. 2020), cert. denied, 291 So. 3d 1112, 2020 Miss. LEXIS 163 (Miss. 2020)

Claimant's injury was the misdiagnosis of her condition, which she could not reasonably have known about until another doctor told her she did not have multiple sclerosis; her limitations period began to run when she first learned of her misdiagnosis, and her notice-of-claim letter was timely, as was her filing of suit. Green v. Singing River Health Sys., — So. 3d —, 2019 Miss. App. LEXIS 543 (Miss. Ct. App. Nov. 5, 2019), sub. op., 294 So. 3d 646, 2020 Miss. App. LEXIS 29 (Miss. Ct. App. 2020).

16. Illustrative cases.

Defendant health system's letter was insufficient to put plaintiff on notice of an actionable claim in November 2016. The chancellor prematurely and erroneously found that the one-year statute of limitations set forth in Miss. Code Ann. § 11-46-11(3)(a) expired and erred when it granted defendant's motion to dismiss. Davis v. Singing River Health Sys., 298 So. 3d 1042, 2020 Miss. App. LEXIS 63 (Miss. Ct. App.), cert. denied, 299 So. 3d 796, 2020 Miss. LEXIS 307 (Miss. 2020).

Trial court properly dismissed the detainee's complaint against the State and the county district attorney's office because the detainee admitted he did not comply with the mandatory provision of this section, and the federal complaint was filed more than one year after the claim accrued. Burnett v. Hinds Cty., 313 So. 3d 471, 2020 Miss. LEXIS 357 (Miss. 2020).

Trial court properly dismissed detainee's claims against the county defendants because he did not file a notice of claims upon the county clerk, and because no proper notice was filed, the tolling provisions did not apply, and the detainee's claims were barred by the one-year statute of limitations. Burnett v. Hinds Cty., 313 So. 3d 471, 2020 Miss. LEXIS 357 (Miss. 2020).

Trial court properly dismissed the detainee's complaint against the city because his notices of claims did not comply with this section's requirements, as he put no information regarding his residence at the time of the arrest, or his residence at the time of filing the notice, nor did he offer other identifying information other

than his name. Burnett v. Hinds Cty., 313 So. 3d 471, 2020 Miss. LEXIS 357 (Miss. 2020).

CHAPTER 51.

APPEALS

§ 11-51-29. Prepayment of costs in civil cases on appeal.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by denying the ex-husband's request to proceed in forma pauperis on appeal because this section was not unconstitutional as applied to him, as her parental rights were not terminated; he was granted supervised visitation rights and telephonic visitation with the children three days a week. Roley v. Roley, — So. 3d —, 2021 Miss. App. LEXIS 216 (Miss. Ct. App. May 18, 2021).

§ 11-51-75. Appeal to circuit court from decision of a local governing authority.

JUDICIAL DECISIONS

1. In general.

Appellant's due process claims relieved him of the statute's requirement that he first appeal the city council's permit decision within 10 days. Wheelan v. City of Gautier, — So. 3d —, 2021 Miss. App. LEXIS 78 (Miss. Ct. App. Feb. 23, 2021).

14. Jurisdiction.

Circuit court erred by dismissing a constable's bill of exceptions for lack of jurisdiction because the constable asserted that he did not receive notice of the county board of supervisors' proceeding and, therefore, was prevented from complying with the statute; the record contained only one letter where the board requested the constable's presence, but the letter was dated eighteen months before the board ultimately removed the constable from office, and that was insufficient notice. Bailey v. Jefferson Cty. Bd. of Supervisors, — So. 3d —, 2021 Miss. App. LEXIS 237 (Miss. Ct. App. June 1, 2021).

Court of appeals had jurisdiction to hear co-owners' appeal because the circuit court twice heard motions to amend the bill of exceptions and determined that the bill of exceptions was proper; the city's concerns about the bill of exceptions could affect other issues of the appeal, but they did not affect the jurisdiction of either the trial court or the court of appeals. Butchart v. City of Canton, 296 So. 3d 751, 2020 Miss. App. LEXIS 177 (Miss. Ct. App. 2020).

17. Final decision

City moved to accept a medical foundation's proposal to the exclusion of all other submitted proposals, but the city passed the motion contingent upon the foundation investing funds in another hospital building and subject to certain restrictions and requirements to be established; this action could be viewed as conditional in nature and therefore did not constitute a final, appealable decision. Adams v. City of Natchez, 302 So. 3d 211, 2020 Miss. App. LEXIS 454 (Miss. Ct. App. 2020).

§ 11-51-79. Appeals from the county court.

JUDICIAL DECISIONS

2. Jurisdiction.

Circuit court lacked appellate jurisdiction to consider a lender's appeal of an order denying a motions for a new trial and for judgment notwithstanding the verdict where lender failed to pay the cost bond within 30 days of the final judgment as required by Miss. Code Ann. § 11-51-79, and thus, his appeal was not perfected. The cost bond requirement was not superseded by Miss. R. App. P. 3(a) as the bond requirement was jurisdictional. Gibson v. Bell, 312 So. 3d 318, 2020 Miss. LEXIS 355 (Miss. 2020).

6. Matters considered on appeal.

Circuit court properly struck and refused to consider a new affidavit in an appeal from a county court because new evidence could not be offered in the appeal. The appeal from the county court to the circuit court had to be decided solely upon the record as made in the county court. W-T Holdings, LLC v. Gilchrist, 299 So. 3d 808, 2019 Miss. App. LEXIS 607 (Miss. Ct. App. 2019), cert. denied, 299 So. 3d 794, 2020 Miss. LEXIS 306 (Miss. 2020).

Intermediate appellate court reviewed the record as made in the county court when a case was first appealed from the county court to a circuit court. W-T Holdings, LLC v. Gilchrist, 299 So. 3d 808, 2019 Miss. App. LEXIS 607 (Miss. Ct. App. 2019), cert. denied, 299 So. 3d 794, 2020 Miss. LEXIS 306 (Miss. 2020).

CHAPTER 53.

COSTS

§ 11-53-81. Recovery of attorney's fees in suit on open account.

JUDICIAL DECISIONS

1. In general.

Equipment rental company could not recover attorney's fees under the open account statute because no underlying contract existed between the company and a subcontractor. M & R Builders, LLC v. Williams Equip. & Supply Co., 281 So. 3d 320, 2019 Miss. App. LEXIS 393 (Miss. Ct. App. 2019).

5. Establishment of open account.

Trial court erred in awarding attorneys' fees to the florist because, while there was an oral contract, the case did not involve an open account where there was not a running balance of credits and debits or any testimony that either party believed payment was due at the convenience of either party. Rogers v. Casey & Co. LLC, 293 So. 3d 857, 2019 Miss. App. LEXIS 595 (Miss. Ct. App. 2019).

CHAPTER 61.

EXERCISE OF FIRST AMENDMENT RIGHTS

Sec.

11-61-3. Wearing of tribal regalia or objects of cultural significance at public events.

§ 11-61-3. Wearing of tribal regalia or objects of cultural significance at public events.

(1) The Legislature recognizes that the Mississippi Band of Choctaw Indians is the only federally recognized Indian tribe in the State of Mississippi, and the purpose of this section is to help further the state's recognition of the unique cultural heritage of federally recognized Indian tribes and the state's commitment to preserving the cultural integrity of federally recognized Indian tribes.

(2) A governmental entity may not prohibit an individual from wearing traditional tribal regalia or objects of cultural significance at a public event.

(3) For purposes of this section, the following definitions apply:

(a) "Individual" means a human being, regardless of age, who is a member or descendant of a federally recognized Indian tribe.

(b) "Governmental entity" means any branch, department, agency or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of this state.

(c) "Political subdivision" has the meaning provided in Section 11-46-1.

(d) "Public event" means an event held or sponsored by a governmental entity, including, but not limited to, an award ceremony, a graduation ceremony or public meeting.

HISTORY: Laws, 2020, ch. 405, § 1, eff from and after July 1, 2020.

CHAPTER 71.

MISSISSIPPI BACK-TO-BUSINESS LIABILITY ASSURANCE AND HEALTH CARE EMERGENCY RESPONSE LIABILITY PROTECTION ACT

Sec.

11-71-1. Short title.
11-71-3. Definitions.
11-71-5. Immunity from suit for civil damages for certain COVID-19-related injuries or death if applicable public health guidance followed in good faith.
11-71-7. Immunity from suit for health care professionals and health care facilities for injuries or death related to health care services performed during COVID-19 state of emergency; duration of immunity.
11-71-9. Immunity from suit for civil damages for injuries related to exposure to COVID-19 for persons who make, sell or donate qualified products, or who make, sell or donate certain cleaning supplies or personal protective equipment.
11-71-11. Exceptions to immunity; limitations of chapter.
11-71-13. Statute of limitations for suits for alleged injuries related to COVID-19.

§ 11-71-1. Short title [For effective and expiration dates, see Editor's Note].

This chapter shall be known and may be cited as the "Mississippi

Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act."

HISTORY: Laws, 2020, ch. 475, § 1, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides: "SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-3. Definitions [For effective and expiration dates, see Editor's Note].

As used in this chapter, the following words shall have the following meanings:

(a) "COVID-19" means the novel coronavirus identified as SARS-CoV-2, the disease, health condition or threat caused by the novel coronavirus SARS-CoV-2, or a virus mutating therefrom, and conditions associated with the disease.

(b) "COVID-19 State of Emergency" means:

(i) A public health emergency related to COVID-19 declared by the United States Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 USC Section 247d);

(ii) A Presidential declaration of emergency related to COVID-19 under the National Emergencies Act or the Stafford Act; or

(iii) A state of emergency related to COVID-19 proclaimed by the Governor of the State of Mississippi under Section 33-15-11(b)(17).

(c) "Disinfecting or cleaning supplies" includes, but is not limited to, hand sanitizers, cleaners, disinfectants, sprays and wipes intended for use in removal or mitigation of bacterial or viral disease-causing agents from surfaces or spaces.

(d) "First responder" means state and local law enforcement personnel, fire department personnel, emergency medical personnel, ambulance service provider personnel, emergency management personnel and public works personnel who may be deployed in response to the COVID-19 state of emergency.

(e) "Health care facility" means:

(i) Any facility in which health care services are provided, including, but not limited to, any licensed or state-approved facility; or

(ii) Any field hospital, modular field-treatment facility or other facility designated by the State Department of Health or the Mississippi Emergency Management Agency for temporary use for the purpose of providing health care services related to the COVID-19 state of emergency.

(f) "Health care professional" means:

(i) A person who is licensed, registered, permitted, or certified in any state to provide health care services, whether paid or unpaid, including

persons engaged in telemedicine or telehealth, and any employee, agent or contractor of such person;

(ii) An emergency medical technician who is licensed in any state; or

(iii) A volunteer or military personnel who is approved by or works under the direction of the State Department of Health or the Mississippi Emergency Management Agency and who provides health care services in response to the COVID-19 state of emergency in the State of Mississippi.

(g) "Health care services" means any care, treatment, service, or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

(h) "Person" means an individual, the state and political subdivisions as defined in Section 11-46-1, association, educational entity, for-profit or nonprofit entity, religious organization or charitable organization.

(i) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators or other equipment designed to protect the wearer from the spread of infection or illness.

(j) "Premises" means any physical place serving a commercial, residential, educational, religious, governmental, cultural, charitable or health care purpose.

(k) "Public health guidance" means written guidance related to the COVID-19 state of emergency that is issued by an executive agency or regulatory agency of the federal government or an executive agency of the State of Mississippi.

(*l*) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to treat a person with COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product's normal use to treat a person with COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19 which have been approved by or submitted to the United States Food and Drug Administration ("FDA") for approval within FDA-prescribed time periods; and components of qualified products.

HISTORY: Laws, 2020, ch. 475, § 2, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides:

"SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-5. Immunity from suit for civil damages for certain COVID-19-related injuries or death if applicable public health guidance followed in good faith [For effective and expiration dates, see Editor's Note].

(1) A person, or agent of that person, who attempts in good faith to follow applicable public health guidance shall be immune from suit for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services.

(2) A person, or agent of that person, shall be immune from suit for civil damages for injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services in the time before applicable public health guidance was available.

(3) An owner, lessee, occupant or any other person in control of a premises, who attempts, in good faith, to follow applicable public health guidance and directly or indirectly invites or permits any person onto a premises shall be immune from suit for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19.

HISTORY: Laws, 2020, ch. 475, § 3, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides: "SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-7. Immunity from suit for health care professionals and health care facilities for injuries or death related to health care services performed during COVID-19 state of emergency; duration of immunity [For effective and expiration dates, see Editor's Note].

(1) Any health care professional or health care facility shall be immune from suit for any injury or death directly or indirectly sustained because of the health care professional's or health care facility's acts or omissions while providing health care services related to a COVID-19 state of emergency. The immunity takes effect when the COVID-19 state of emergency is declared, applies to any health care services performed during the COVID-19 state of emergency, including any period of renewal or extension, and terminates one (1) year after the end of the COVID-19 state of emergency. The immunity includes, but is not limited to, injury or death resulting from screening, assessing, diagnosing or treating persons in relation to the COVID-19 state of emergency or the medical conditions causing the COVID-19 state of emer-

gency, or acts or omissions while providing health care services to persons unrelated to the COVID-19 state of emergency when those acts or omissions were intended to support the state's response to the COVID-19 state of emergency, including, but not limited to, the following:

(a) Delaying or cancelling nonurgent or elective dental, medical or surgical procedures, or altering the diagnosing or treatment of any person in response to an order, directive or guideline issued by the federal, state or a local government;

(b) Diagnosing or treating patients outside the normal scope of the health care professional's license or practice;

(c) Using equipment or supplies outside of the product's normal use for medical practice and the provision of health care services, including using or modifying a medical device for an unapproved use or indication;

(d) Prescribing, administering or dispensing a pharmaceutical for off-label use to treat a patient in relation to a COVID-19 state of emergency;

(e) Conducting tests or providing treatment to any person outside of the premises of standard health care facilities; or

(f) Acts or omissions undertaken by a health care professional or health care facility because of a lack of staffing, facilities, equipment, supplies or other resources attributable to the COVID-19 state of emergency that make it impractical for the health care professional or health care facility to provide the level or manner of care to any person that otherwise would have been required in the absence of the COVID-19 state of emergency.

(2) This chapter shall be liberally construed with regard to immunizing health care professionals or health care facilities for acts or omissions undertaken while providing health care services related to a COVID-19 state of emergency.

HISTORY: Laws, 2020, ch. 475, § 4, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides: "SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-9. Immunity from suit for civil damages for injuries related to exposure to COVID-19 for persons who make, sell or donate qualified products, or who make, sell or donate certain cleaning supplies or personal protective equipment [For effective and expiration dates, see Editor's Note].

(1) A person who designs, manufactures, labels, sells, distributes, or donates a qualified product in response to COVID-19 shall be immune from suit for civil damages for any injuries resulting from or related to actual or

alleged exposure or potential exposure to COVID-19 caused by a qualified product.

(2) A person who designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 outside the ordinary course of the person's business shall be immune from suit for civil damages for any injuries resulting from or related to actual or alleged exposure or potential exposure to COVID-19 caused by the disinfecting or cleaning supplies or personal protective equipment.

HISTORY: Laws, 2020, ch. 475, § 5, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides: "SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-11. Exceptions to immunity; limitations of chapter [For effective and expiration dates, see Editor's Note].

(1) Notwithstanding any other provision of this chapter, the immunities provided in this chapter shall not apply where the plaintiff shows, by clear and convincing evidence, that a defendant, or any employee or agent thereof, acted with actual malice or willful, intentional misconduct.

(2) Nothing in this chapter:

(a) Creates, recognizes or ratifies a claim or cause of action of any kind;

(b) Eliminates a required element of any claim;

(c) Affects workers' compensation law, including the exclusive application of such law; or

(d) Amends, repeals, alters or affects any other immunity or limitation of liability.

HISTORY: Laws, 2020, ch. 475, § 6, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides: "SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."

§ 11-71-13. Statute of limitations for suits for alleged injuries related to COVID-19.

Except as otherwise provided in Section 11-46-11, a person must bring suit for any alleged injury arising from COVID-19 not later than two (2) years after the day the cause of action accrues.

HISTORY: Laws, 2020, ch. 475, § 7, eff from and after March 14, 2020.

Editor's Note — Laws of 2020, ch. 475, § 8, effective March 14, 2020, provides:

"SECTION 8. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively."